

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO. 841 OF 2006.

Mohammed Khalique M.Khan. ... Appellant.
Versus.
Municipal Corporation of Greater
Bombay. ... Respondent.

Shri Anil Yadav for the Appellant.

Shri J.J.Zavier for the Respondent.

CORAM : ABHAY S.OKA, J.

DATED : 28th November, 2007.

P.C.:

1. Not on board. Taken on board.

2. The affidavit-cum-undertaking of the Appellant is taken on record and marked "X" for identification. The Advocate for the Appellant states that the Appellant is personally present in the Court.

3. The Appellant filed a suit for challenging action of demolition in respect of the suit structure initiated by the Respondent-Corporation under section 351 of the Mumbai Municipal Corporation Act, 1888. The said suit was dismissed. Being aggrieved by the dismissal of the suit, the present First Appeal has been preferred by the Appellant.

4. Pending the suit, a proposal for regularisation of the suit structure was rejected by the

Respondent-Corporation. It is stated that an Appeal was preferred by the Appellant for challenging the said order and the Appeal also stands rejected.

5. The prayer made in the affidavit tendered today is for seeking permission to withdraw the Appeal and the pending Application therein. The Appellant has prayed that the protection may be granted to the suit structure for a period of one year. He has given an undertaking that he will demolish the suit structure immediately on completion of the period of one year. He has stated that he has submitted a proposal for re-development of the larger property on which the suit structure is situated. The said proposal has been submitted along with letter dated 29th March 2007 of M/s.Surve & Associates, Architects. It is pointed that in view of the pendency of this Appeal, the proposal will not be processed on the ground that "no action pending certificate" is not produced. The Appellant has given an undertaking that irrespective of grant or rejection of the proposal for re-development, he will demolish the suit structure at the end of one year. It is submitted that the proposal for re-development submitted by the said Architects should not be rejected on the ground that "no action pending certificate" is not submitted.

6. The Appellant is unconditionally withdrawing the

appeal and has given an undertaking to demolish the suit structure on his own. Therefore, the request made by the Appellant deserves to be accepted.

7. Hence the following order is granted:

- i) The Appeal is dismissed as withdrawn.
- ii) The undertakings contained in the affidavit of the Appellant tendered today are accepted.
- iii) In view of the said undertakings, the Respondent-Corporation will not demolish the suit structure till 28th November 2008 subject to condition that the Appellant will not create any third party interests in respect of the structure and will not make any additions and alternations to the said structure.
- iv) If the Appellant fails to remove the structure on or before 28th November 2008, it will be open for the Respondent-Corporation to immediately demolish the structure.

- v) It is clarified that the structure will be demolished in terms of this order irrespective of the result of the proposal for development submitted by the Appellant. It is, however, clarified that the proposal shall not be rejected on the ground that "no action pending certificate" as regards the suit structure is not submitted by the Appellant as the Respondent-Corporation can always incorporate a condition in the IOD regarding demolition of the structure by the Appellant in terms of this order.
- vi) There will be no order as to costs.
- vii) The parties to act on an authenticated copy of this order.

Judge.